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Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime[1, 2, 3]

[1] The present revised text is the result of the first reading of the draft Protocol, undertaken by the Ad Hoc Committee at its first and third sessions, held in Vienna from 19 to 29 January and from 28 April to 3 May 1999. The second reading of articles 2, 3, 4, 4 *bis* (partial), 5 and 8 (partial) was carried out from 13 to 15 October 1999, during the fifth session of the Ad Hoc Committee. The second reading of articles 8-18 *bis* and a partial final reading of article 2 were completed at the seventh session, held in Vienna from 17 to 28 January 2000. Changes agreed and proposals and suggestions made by States have been incorporated into the text. At the seventh session, it was also decided that dealing with "explosives" as such was not within the present mandate of the Ad Hoc Committee. The definition of that term was accordingly removed from article 2 and references to it were removed from the preamble and other articles not considered at that session. See also footnote 3 below.

[2] Following the discussion at the fifth session of the Ad Hoc Committee, the title was revised to correspond to the wording of Economic and Social Council resolution 1998/18 of 28 July 1998 and General Assembly resolutions 53/111 and 53/114 of 9 December 1998.

[3] At the seventh session of the Ad Hoc Committee, discussion resumed on the question of whether the Protocol should deal with explosives and whether that was within the mandate given to the Ad Hoc Committee by the General Assembly. The opinion of the Officer-in-Charge of the Office of the Legal Counsel on that matter, requested at the fifth session of the Ad Hoc Committee, was communicated to the Ad Hoc Committee at its seventh session. According to the Office of the Legal Counsel, the mandate of the Ad Hoc Committee to draft an instrument dealing with firearms, their parts and components and ammunition did not include the drafting of provisions on explosives in the Protocol; however, once the study on the illicit manufacturing of and trafficking in explosives had been completed by the expert group to be convened pursuant to General Assembly resolution 54/127 of 17 December 1999 and once the Secretary-General had submitted the results of the study to the Commission on Crime Prevention and Criminal Justice, the Ad Hoc Committee could consider the possibility of drafting an international instrument on that subject. Following a discussion on the matter, the Ad Hoc Committee at its seventh session decided to remove references to "explosives" per se from the draft Protocol. References to "explosives" incidental to subparagraphs (c) (i) and (ii) of the definition of "firearm" in article 2 were not affected by the decision and were therefore retained.

The States Parties to the present Protocol,

Option 1

(a) *Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

Option 2[4]

(a) *Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, [their parts and components and][5] ammunition, [and other related materials,][6] owing to the harmful effects of those activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

Option 1

(b) *Concerned* by the [increase],[7] at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition [,][8] and other related materials and by the serious problems resulting therefrom,

Option 2[9]

(b) *Concerned* that a sizeable portion of all transfers of firearms and ammunition is illicit, having destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of interstate conflict, and that the illicit manufacturing of and trafficking in firearms, ammunition and other related materials constitute serious obstacles to the culture of peace and to meaningful development cooperation,

Option 1

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms,

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[4] Alternative proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[5] Addition proposed by the delegation of Japan (A/AC.254/L.22). The delegation of Japan proposed that, throughout the draft Protocol, the words "ammunition and other related materials" be replaced with the words "their parts and components and ammunition", so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolutions 53/111 and 53/114.

[6] Deletion proposed by the delegation of Japan (A/AC.254/L.22) (see footnote 5).

[7] The delegation of the United Kingdom of Great Britain and Northern Ireland proposed replacing the word "increase" with the word "occurrence" or the words "indications of an increase" (A/AC.254/5/Add.1 and Corr.1). The delegation of Sweden proposed that evidence of the "increase" should be quoted or at least mentioned (A/AC.254/5/Add.5).

[8] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[9] Alternative proposed by the delegation of Colombia.

ammunition and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

Option 2[10]

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and that there is an urgent need for all States, especially those States which produce, export and import arms, to take measures to achieve those goals and to continue to develop common approaches to solving those problems,

Option 1

(d) *Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

Option 2[11]

(d) *Considering* that immediate action should focus on preventing the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, by exercising tighter control over their legal transfer, on strengthening pertinent laws and regulations, strictly enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related materials at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

(e) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation, the exchange of information and other appropriate measures at the national, regional and global levels,

Option 1

[(e) *bis* *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,][12]

(f) *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, [and the database established by the Customs Cooperation Council

[10] Alternative proposed by the delegation of Colombia.

[11] Alternative proposed by the delegation of Colombia.

[12] Addition proposed by the delegation of South Africa (A/AC.254/5/Add.5).

(known as the World Customs Organization), the Central Information System,][13] to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

Option 2[14]

[(f) *bis* *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation and the strengthening of existing international law enforcement support mechanisms such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,]

(g) *Stressing* that the promotion of [harmonized import and export][15] [and in-transit][16] controls over the licit international movement of firearms, ammunition and other related materials [, in addition to a system of procedures for applying them,][17] is essential to the prevention of illicit [international][18] trafficking in firearms, their parts and components and ammunition,

[(g) *bis* *Stressing also* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,

(g) *ter* *Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,][19]

Option 1

(h) *Recognizing* that States have developed different cultural and historical uses for firearms and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by States Parties,

[13] Addition proposed by the Customs Cooperation Council, known as the World Customs Organization (A/AC.254/CRP.4).

[14] Alternative to preambular paragraphs (e) and (f) proposed by the delegation of Colombia.

[15] The delegation of Pakistan proposed to replace this phrase with the words "to promote cooperation in matters relating to import and export". The delegations of Sweden and the United States of America expressed their opposition to that view and proposed to keep the original phrase.

[16] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[17] The delegation of Mexico proposed deletion of this phrase (A/AC.254/5/Add.1 and Corr.1). The delegation of Colombia proposed to keep this phrase but to replace the word "applying" with the word "enforcing".

[18] Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[19] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

Option 2[20]

(h) *Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use that are recognized by such States,

Option 1

(i) *Recalling* that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit States Parties to enacting legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Option 2[21]

(i) *Recognizing also* that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly domestic character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

[(i) *bis Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,][22]

Have agreed as follows:

[*Article O*

The provisions of this Protocol shall not be construed or applied either directly or indirectly to undermine the inalienable right to self-determination of peoples struggling against colonial or other forms of alien domination and foreign occupation, a right that is enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.][23]

[20] Alternative proposed by the delegation of Colombia.

[21] Alternative proposed by the delegation of Colombia.

[22] Addition proposed by the delegations of Mexico (A/AC.254/5/Add.1 and Corr.1) and Colombia.

[23] Addition proposed by the delegation of Pakistan.

Article 1

Relationship with the United Nations Convention against Transnational Organized Crime[24]

1. This Protocol supplements[25] the United Nations Convention against Transnational Organized Crime, done at [...] (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

2. With a view to combating the illegal activities carried out by criminal organizations in the areas of the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, as well as their use for the purpose of facilitating their unlawful enterprises, the purpose of this Protocol is:

(a) To promote and facilitate cooperation among States Parties to the Protocol with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

(b) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.[26]

Article 2

Definitions[27]

For the purpose of this Protocol, the following definitions shall apply:

(a) "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm

[24] There was an extensive discussion on the relationship between the Convention and the Protocols. A majority of delegations, including those of Canada, China, Ecuador, Pakistan and the Sudan, supported the view that the Protocol should be not mandatory but optional for the States Parties to the Convention. The delegation of Sweden noted that the status of the relation of the Protocols with the Convention might be either subordinate or complementary. Some delegations, including those of Australia, France and Poland, expressed the view that a State Party to the Protocol must be a State Party to the Convention (A/AC.254/L.9). The delegation of Poland proposed to include in article 26 of the draft Convention a provision similar to that contained in article 4 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (United Nations, *Treaty Series*, vol. 1342, No. 22495). Some delegations, however, including those of Belgium, Croatia and Mexico, expressed the view that States should have a more flexible choice in deciding to become Parties to the Convention and/or the Protocols.

A majority of delegations, including those of Austria, Ecuador, France, Poland and the Sudan, also supported the view that the Protocols should be considered additions to and extensions of the Convention, not independent treaties, and that the consistency in the basic principles between the Convention and the Protocols should be maintained.

[25] The delegation of South Africa expressed its concern that referring to the Protocol as a "supplement" to the Convention would diminish the importance of the Protocol; it suggested that the article could simply read "This Protocol to the Convention ..." (A/AC.254/5/Add.5).

[26] Addition proposed by the delegation of France (A/AC.254/L.21).

[27] Some delegations, including those of Australia, Belgium, Croatia, France, the Republic of Korea and Spain, proposed that the definitions in this article should be in a logical order rather than in alphabetical order. At the seventh session of the Ad Hoc Committee, one delegation suggested that the definitions should be placed in the order in which the terms defined appeared in the text of the draft Protocol. Excluding references in the preamble and the definitions themselves, this would result in the following order: "firearm" (art. 1), "ammunition" (art. 1), "parts and components" and/or "other related materials" (art. 1), "illicit manufacturing" (art. 3, para. (a)), "illicit trafficking" (art. 5, para. (a)), and "tracing" (art. 8). One defined term, "controlled delivery", is not used anywhere in the draft Protocol.

[provided that those components are themselves subject to authorization in the respective State Party];[28]

[(b) "Controlled delivery": the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substances substituted for them][29] to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article 5 of this Protocol;][30]

(c) "Firearm":[31]

(i) Any [portable][32] [lethal][33] barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive,[34] excluding antique firearms or their replicas.[35] Antique

[28] At the fifth and seventh sessions of the Ad Hoc Committee, some delegations proposed to delete the bracketed text to ensure international consistency in the definition at the international level, while others sought to retain it in order to preserve flexibility at the national level. At the seventh session, some delegations proposed deletion of the words "its components, including" in order to limit the scope of components that would be considered "ammunition" to those specifically listed.

[29] Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

[30] Some delegations, including that of Mexico, proposed the deletion of this subparagraph (A/AC.254/5/Add.1 and Corr.1). Other delegations noted that this subject was also dealt with in the draft Convention and expressed reservations on this text until the related articles in the draft Convention had been discussed. One delegation stated that this paragraph would encounter problems of a constitutional nature in its country. At the seventh session of the Ad Hoc Committee, those delegations which supported deleting this definition noted that it was unnecessary, as the term "controlled delivery" was not used anywhere in the draft Protocol.

[31] The discussion at the fifth session focused on whether the term "firearm" should be defined broadly or narrowly, in the context of three options then before the Ad Hoc Committee: option 1 (original text as previously modified), option 2 (proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1)) and option 3 (proposed by the delegation of Japan (A/AC.254/L.22)). Many delegations supported wording that incorporated elements of all three of the options under discussion. The major issues were as follows: whether it was appropriate, for reasons related to policy and to the mandate of the Ad Hoc Committee, to include other weapons or destructive devices as proposed in subparagraph (c) (ii) of this article (see below); whether the definition should be limited to "portable" or "person-portable" weapons; and whether the reference to antique firearms should include a reference to national law or should simply refer to the date of manufacture. The delegation of the Netherlands proposed to define the term broadly and to limit the application of certain provisions to "portable" firearms (see A/AC.254/L.70). It was agreed that a unified text would be prepared and that the language pertaining to unsettled issues would be placed in square brackets. The text of subparagraph (c) (i) of this article combines this unified text with proposals made during the fifth session of the Ad Hoc Committee.

[32] Several delegations proposed the inclusion of the word "portable" in order to clarify that larger barrelled weapons were not included. For further clarity, some delegations also suggested including the words "person-portable" to clarify that weapons transportable by vehicle were also not included. Some delegations expressed concern about vagueness or uncertainty in determining portability.

[33] Some delegations expressed concern about vagueness or uncertainty in determining lethality. At the seventh session of the Ad Hoc Committee, the delegation of the United Kingdom explained that the intention in including the word "lethal" was to exclude non-functional items such as replicas and toys; in the United Kingdom, the word was interpreted as meaning capable of causing more than merely superficial injuries, which in forensic terms required more than one "foot-pound" of kinetic energy. Another delegation expressed the view that, taken literally, the word "lethal" meant capable of causing death, which was too high a standard and would exclude too many firearms.

[34] At the seventh session of the Ad Hoc Committee, the delegation of the Islamic Republic of Iran proposed that the definition of the term "firearm" should be further limited to those weapons treated as firearms in accordance with the practices of law enforcement in each jurisdiction. It proposed the insertion of the words

firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after [1870] [1899];[36] and

[(ii) Any [other weapon or destructive device such as][37] an explosive bomb, incendiary bomb or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];[38]

(d) "Illicit manufacturing": the manufacturing or assembly of firearms, [their parts and components,][39] ammunition and other related materials:

(i) From components or parts illicitly trafficked;

(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place;[40] or

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"limited to the law enforcement practices of the States Parties and" at this point in the text.

[35] At the seventh session of the Ad Hoc Committee, the delegation of China proposed that the words "or their replicas" be replaced with the words ", their replicas, and large-calibre military arms, weapons or launchers". Discussion ensued in which some delegations favoured size limitations to conform to the commonly accepted definition of the term "firearm" and others preferred more open-ended language. Delegations that supported limitations on size argued that the present wording was vague and that large military weapons were more appropriate for arms control instruments. Those which supported the existing text argued that while very large weapons were unlikely to be used in organized crime, they were sometimes used to attack the police and were frequently the subject of trafficking on behalf of non-criminal users.

[36] At the seventh session of the Ad Hoc Committee, there was discussion of the cut-off date for "antique" firearms. Some delegations were in favour of inserting the year 1899 here for convenience and because it would not require States with existing legislative dates up to 1899 to change their existing laws. Other delegations preferred inserting the year 1870 here on technological grounds, because that would exclude all automatic and semi-automatic weapons.

[37] Some of the delegations that supported the inclusion of subparagraph (c) (ii) of this article were of the view that the phrase "Any other weapon or destructive device ..." was too broad. The delegation of the United States, supported by several other delegations, proposed that it be deleted, leaving only the list. The delegation of Mexico proposed that it be placed in square brackets.

[38] At the seventh session of the Ad Hoc Committee, discussion continued on whether subparagraph (c) (ii) of this article should be included or not. Some delegations supported its inclusion, regarding it as being necessary to the control of criminal trafficking in the devices in question, even though they were not often used by organized crime. Other delegations opposed this on the basis that it was beyond the mandate of the Committee to deal with "firearms, their parts and components and ammunition" and that such matters were better left to negotiations and instruments dealing with disarmament matters. The Chairman noted that there was little time left to resolve this question and asked delegations to reflect on the three major options discussed. Those were: (a) to delete the provision, thus restricting the application of the Protocol to "firearms" as defined in subparagraph (i), their parts and components and ammunition; (b) to retain the provision, extending the application to items listed in it; and (c) to adopt the compromise proposed by the delegation of Norway, in which the items would not be defined in article 2, but would still be criminalized by a provision in article 5. Regarding the third option, some delegations expressed support, while others expressed concern that it would not subject the items to other provisions of the Protocol, notably those dealing with marking, record-keeping and cooperation. An alternative compromise proposed by the delegation of Turkey was also considered. It would involve incorporating the items within an expanded definition of the term "ammunition", by including the present definition as subparagraph (a) (i), "Cartridge", and moving the provision currently in subparagraph (c) (ii), "Any other weapon or destructive device", to a new subparagraph (a) (ii) (see A/AC.254/L.151).

[39] See footnote 2.

[40] This compromise text, prepared by the delegation of the United Kingdom based on previous options, was supported by other delegations. At its fifth session, the Ad Hoc Committee agreed to use this text as the basis for future discussion.

(iii) Without marking the firearms at the time of manufacturing;[41]

(e) "Illicit trafficking":[42, 43]

(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, [parts and components,][44] ammunition and [other related materials] from or across the territory of one State Party to that of another State Party

Option 1

if the firearms are not marked in accordance with article 9 of this Protocol or if the transaction is not licensed or authorized in accordance with article 11 of this Protocol

Option 2

[if any one of the States Parties concerned has not legally authorized it][45]

Option 3

[if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol][46]

Option 4

[without the authorization of or in violation of the legislation or regulations of either of the States Parties concerned;][47]

[41] The delegation of China proposed adding the words "duplicate or false marking" to this provision in order to include cases where firearms were marked at manufacture, but in a manner that would intentionally defeat or resist subsequent efforts to trace them.

[42] Some delegations, including those of Pakistan, Qatar, the Sudan and the Syrian Arab Republic, expressed concern that the definition of "illicit trafficking" might violate the principle of the Charter of the United Nations regarding respect for equal rights and the self-determination of peoples and the inherent right of individual or collective self-defence if an armed attack were to occur.

[43] The revised text of this provision was proposed by the delegation of Switzerland at the fifth session of the Ad Hoc Committee. This new text was also meant to replace the text of previous subparagraph (c) (ii). The delegation of Pakistan proposed that the definition of "illicit trafficking" be limited to the activities described only when they were engaged in by a transnational organized criminal group. Other delegations opposed that proposal on the grounds that it would limit the effectiveness of many of the measures, since the nature of the group would have to be determined before the provisions of the Protocol could be employed in investigating it. One delegation pointed out that activities such as illicit manufacturing or marking might be carried out by individuals and later taken advantage of by an organized criminal group, leaving no basis for applying the Protocol to those activities.

[44] The delegation of Pakistan proposed that these words be added to make this provision consistent with the mandate of the Ad Hoc Committee (General Assembly resolution 53/111) and that the words "other related materials" be deleted (see also footnote 2).

[45] Proposed by the delegation of Venezuela at the fifth session of the Ad Hoc Committee.

[46] This proposal was made by the delegation of the United States. At the third session of the Ad Hoc Committee, Sweden had noted the need to clarify the meaning of this phrase (A/AC.254/5/Add.5).

[47] Proposed by the delegation of France at the fifth session of the Ad Hoc Committee.

[, or the brokering of such activities;][48]

[(ii) The import of firearms without marking at the time of importation;][49]

[(iii) The obliteration, removal or alteration of the serial number[50] on a firearm[51]].[52]

Option 1

(f) "Other related materials":[53] any components, parts or replacement parts of a firearm [that are essential to its operation][54] [or accessories][55] [that can be attached to a firearm][56] [and that enhance its lethality].[57]

[48] Proposal of the delegation of Sweden at the fifth session of the Ad Hoc Committee.

[49] Proposal made by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Portugal and South Africa (A/AC.254/5/Add.5).

[50] At the fifth session of the Ad Hoc Committee, the delegation of India proposed adding the word "marking" after the words "serial number".

[51] At the fifth session of the Ad Hoc Committee, the delegation of India proposed to insert the words "before, during or after importation or exportation" at the end of this subparagraph.

[52] This proposal was made by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1). The delegations of Botswana, France and the Republic of Korea suggested that criminalization of those acts should be dealt with in article 5 instead of in the definition of illicit trafficking (see footnote 95). The delegation of India suggested that this provision should be kept as part of the definition and proposed changes to link it more closely with import and export activity.

[53] At the fifth session of the Ad Hoc Committee, there was extensive discussion of whether this article should include a definition of "other related materials" or "parts and components". A majority of delegations favoured a definition of "parts and components" because that phrase most closely reflected the mandate of the Ad Hoc Committee (General Assembly resolution 53/111), but there was a range of views with respect to the balance of the definition. Most delegations sought more general wording to ensure that all of the major parts of firearms would be included but that minor parts would not be included. Delegations were asked to propose a compromise on the definition of "parts and components" at the next session of the Ad Hoc Committee at which the draft Protocol would be discussed (see footnote 2).

[54] Deletion proposed by the delegations of Mexico, South Africa (A/AC.254/CRP.6), the United Kingdom and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand.

[55] The deletion of these words was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand. Delegations were generally in favour of considering the term "accessories" to include items such as silencers, which though not parts or components and not "essential" to the operation of a firearm, were nevertheless of concern in dealing with organized crime. Most agreed that this issue needed to be dealt with, but many were concerned that the term "accessories" was too broad.

[56] Deletion proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand.

[57] The deletion of these words was proposed by the delegations of Mexico, South Africa (A/AC.254/CRP.6) and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand. The delegation of the United States noted that the use of this criterion would exclude some components or accessories such as silencers, which were of concern in the context of transnational organized crime but did not enhance lethality.

Option 2[58]

(f) "Parts and components": any elements of a firearm [that are essential to its operation,][59] [such as] [including][60] a barrel, frame, cylinder or slide.

[(f) *bis* "Tracing":[61] the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership.][62, 63]

[58] The delegation of Japan proposed that, throughout the draft Protocol, the words "ammunition and other related materials" be replaced with the words "their parts and components and ammunition", so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolutions 53/111 and 53/114. In line with that proposal, the delegation of Japan proposed that the definition of "other related materials" be replaced with that of "parts and components" (A/AC.254/L.22).

[59] At the fifth session of the Ad Hoc Committee, some delegations were of the view that these words were too vague, since even some minor components that were not unique to a firearm were "essential" to its operation and some major components, such as the stock, were not. This question was linked to the "illustrative list" that followed. Some delegations were of the opinion that the list was too restrictive, while others felt that it provided an appropriate clarification, excluding minor but "essential" parts. The delegation of the United States proposed that the test for inclusion should not be whether the parts were "essential" or whether they contributed to lethality, but whether they were unique to firearms or identifiable as firearm components or parts. The delegation of Italy proposed inserting the words "the operation of that firearm or any other firearm".

[60] Proposal submitted by the delegation of Singapore at the fifth session of the Ad Hoc Committee.

[61] During the fifth session of the Ad Hoc Committee, there was extensive discussion of the term "tracing". Some delegations saw tracing as a term of art referring to the tracing of specific firearms from place to place or from owner to owner using the unique serial number or other markings on the firearm and records of transfers. Other delegations saw the term as a more general reference to technical or investigative assistance. Those delegations sought to extend the definition to include the tracing of parts, components and ammunition. Some delegations, however, saw this as requiring additional marking and record-keeping, which, in their view, was impracticable. Some other delegations felt that it was not necessary to define the term "tracing".

[62] At the fifth session of the Ad Hoc Committee, the delegation of the United States expressed concern about any provision that would require tracing of firearms for purposes other than assisting in criminal investigations. Some delegations wanted wording that would limit tracing to illicitly manufactured or trafficked firearms, but others pointed out that the legal status of a firearm would not generally be known until or unless it had been traced.

[63] At the seventh session of the Ad Hoc Committee, the delegation of Malawi proposed the use of the present text of article 18 *bis* to define the term "broker" at this point (see A/AC.254/5/Add.22). The delegation of the United States, which had proposed dealing with brokering in articles 5 (Criminalization) and 18 *bis* (Registration and licensing requirements), indicated that it would consider developing a suitable definition for consideration in informal consultations during the eighth session of the Ad Hoc Committee (see A/AC.254/L.150). The delegation of Australia also proposed the incorporation of a new provision into article 2 defining the term "deactivated firearm", in order to clarify the meaning of that term as it was used in article 10 (see A/AC.254/5/Add.22).

Article 3
Purpose[64]

The purpose of this Protocol is:

(a) To promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, [their parts and components and][65] ammunition [and other related materials];[66, 67]

Option 1[68]

(b) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

Option 2[69]

(b) To promote and facilitate cooperation and exchange of information and experience among States Parties[70] to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms,[71] ammunition and [other related materials].[72]

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[64] At the fifth session of the Ad Hoc Committee, some delegations suggested that the subject of article 1, paragraph 2, including subparagraphs 2 (a) and (b), dealt with the purpose of the draft Protocol rather than its relationship with the draft Convention, and should therefore be moved to article 3. There was some support for a revised text of article 3 based on this suggestion and a compromise between the options already proposed. (The delegations of Mexico and the United States proposed a text that was subsequently translated and distributed at the sixth session of the Ad Hoc Committee.) Since this provision was closely related to article 1 of the draft Protocol and several provisions of the draft Convention, it was decided that further discussion should be deferred until the unsettled issues in those provisions had been resolved.

[65] Addition proposed by the delegation of Japan (A/AC.254/L.22) (see footnote 5).

[66] Deletion proposed by the delegation of Japan (A/AC.254/L.33) (see footnote 5).

[67] The delegation of the United States proposed that the text of this paragraph be deleted and replaced with the text currently in article 1, paragraph 2.

[68] This option was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Ecuador, Italy, New Zealand, the Republic of Korea, Switzerland and Turkey. The delegation of South Africa suggested adding the words "combating and preventing illicit manufacturing of and trafficking in firearms, ammunition and other related materials" (A/AC.254/5/Add.5).

[69] Alternative proposed by the delegations of Japan and Mexico (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of Senegal.

[70] The inclusion of the phrase on cooperation among States in the article entitled "Purpose" was supported by the delegation of France, which noted that the purpose of such cooperation should not go beyond combating transnational organized crime and into the area of disarmament and arms control.

[71] The words "parts and components", which had been added to a previous draft in error, have been deleted at this point. The same change has been made in article 5, paragraphs 1 (a), (b) and (c).

[72] At the fifth session of the Ad Hoc Committee, the delegation of the Syrian Arab Republic proposed inserting the words "within the framework of the Convention against Transnational Organized Crime" at the end of this paragraph.

Article 4
Scope[73]

Option 1

This Protocol applies to all classes of [commercially][74] traded [and manufactured][75] firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security.[76]

[73] At the fifth session of the Ad Hoc Committee, the delegations of Belgium (A/AC.254/5/Add.10) and China (A/AC/254/5/L.78) proposed new texts. A majority of delegations supported either option 2 or option 3 or some compromise between the two. Some delegations preferred the inclusion of wording that would exclude the import or export of firearms by private individuals such as tourists or visiting hunters, based on option 1 or some other formula. A few delegations supported option 4, which would limit application to firearms that had been illegally manufactured and traded. Most delegations opposed this option on the grounds that, in order to control illicit firearms trafficking, it was necessary to monitor and place restrictions on all firearms trade, in order to determine what was legal and what was not. There was general support for excluding State-to-State transactions on the grounds that they were more related to arms control than crime control, but there was some concern about the precise meaning of the words "State-to-State transactions". Most delegations were of the view that this should exclude transfers from one Government to another but not transfers between entities owned or operated by Governments, such as state-owned arms manufacturers. One delegation proposed that transactions should be exempted if only one party was a State, but others argued that doing so would effectively exclude all acquisitions or transfers by a State.

[74] The deletion of this word was proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of Croatia. The delegation of Croatia also suggested using the same definition of the term "illicit trafficking" in both article 2 and article 4. The delegation of the Syrian Arab Republic proposed to focus only on illicit firearms used by criminal organizations. In a discussion regarding the phrase "commercially traded", there was some concern about what it meant and whether it would exclude certain types of transactions from those covered by the Protocol. The delegation of the United States expressed concern that the phrase "commercially traded and manufactured" might exclude surplus military firearms. The delegation of Canada was of the view that it excluded only firearms taken from one State to another in private hands and regarded the exclusion as necessary. The delegation of South Africa expressed concern about the possible interpretation that firearms simply given without consideration would not be "commercially traded".

[75] Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of the Syrian Arab Republic.

[76] The delegations of Mexico, the Republic of Korea and Turkey expressed their concern about the technical difficulties that might be caused by the scope of the Protocol being strictly limited only to organized crime. Some delegations, including those of Algeria, France, Germany and the Netherlands, suggested that the scope of the Protocol should not go beyond the mandate set forth by the General Assembly. The delegation of Sweden suggested that, even though the Protocol should be subordinate to the Convention, whose scope was to be limited to transnational organized crime, application of the Protocol should not necessarily be limited to transnational organized crime. The delegation of the United States expressed the view that some provisions of the Protocol should go beyond the scope of transnational organized crime; that view was supported by the delegation of the United Kingdom.

The delegation of Belgium noted that this article might run the risk of violating the Geneva Conventions on the rules of armed conflict. The delegation of Belgium also noted that, in view of the subject matter dealt with in the Protocol, the Ad Hoc Committee should give consideration to the insertion of a safeguard clause in respect of international humanitarian law for situations involving armed conflict, in particular domestic armed conflict, within the meaning ascribed to those terms by international humanitarian law (A/AC.254/5/Add.5).

The delegation of Canada noted that the issue of individuals travelling with firearms legitimately would need to be considered since individuals could be traffickers.

Option 2[77]

This Protocol applies to all classes of firearm, including those which are commercially traded, and all classes of ammunition and related materials, but not to State-to-State transactions or transfers for the purpose of national security.

Option 3[78]

This Protocol applies to all classes of firearms, ammunition and other related materials, except that it does not apply to State-to-State transactions or to transactions for purposes of national security.

Option 4[79]

This Protocol applies to all classes of illegally manufactured and traded firearms, ammunition and other related materials, as defined in article 2 of this Protocol.

[*Article 4 bis*
Sovereignty

1. States Parties shall fulfil their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are exclusively reserved to the authorities of that other State Party by its domestic law.][80]

[77] Alternative proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

[78] Alternative proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia and Ecuador.

[79] Alternative proposed by the delegation of Colombia.

[80] This addition was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). At the fifth session of the Ad Hoc Committee, after a brief discussion, it was decided to defer further consideration of the proposal until the related provisions of the draft Convention (article 2) had been further developed.

Article 5
Criminalization[81]

1. Each State Party shall adopt such legislative [and,][82] or other measures as may be necessary to establish as [criminal][83] offences ["serious crimes" as defined in article 2 *bis*, paragraph (b), of the Convention][84] under its domestic law [, when committed intentionally][85] [and in connection with a criminal organization]:[86]

[81] At a previous session of the Ad Hoc Committee, there was an intensive discussion on the issue of the scope of criminalization in the draft Protocol in relation to the scope of the draft Convention. The issue was whether this provision criminalized illicit trafficking in and manufacturing of firearms in general or only those acts which were related to organized crime.

Some delegations, including those of China and Senegal, expressed the view that a list of offences should not be created in the draft Protocol. The delegation of Paraguay noted that article 5 did not add new offences to the draft Convention but highlighted specific types of conduct already covered by the draft Convention. Some delegations, including those of Canada, Germany, the United Kingdom and the United States, expressed the view that the Protocol should establish as offences conduct not covered by the Convention.

It was suggested by the delegation of Australia that consideration should be given to providing further explanations on the relationship of article 5 of the draft Protocol to article 3 of the draft Convention. The attention of the Ad Hoc Committee was drawn to Economic and Social Council resolution 1998/18, in which the Council decided that the Ad Hoc Committee should hold discussions on, *inter alia*, effective methods of identifying and tracing firearms, as well as on the establishment or maintenance of an import and export and in-transit licensing or similar authorization regime.

[82] Addition proposed by the delegation of Croatia.

[83] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[84] At the fifth session of the Ad Hoc Committee, the delegation of Japan proposed that wording be added here that would ensure that domestic offences established pursuant to this article would also be considered "serious crime" according to the definition of that term in article *2 bis*, paragraph (b), of the draft Convention.

[85] The deletion of these words was proposed by the delegations of Mexico, South Africa (A/AC.254/5/Add.5) and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Colombia and Paraguay. The delegation of Japan proposed to modify the same phrase to read ", when committed [unlawfully] and intentionally" (A/AC 254/5/Add.1 and Corr.1). The delegation of the Syrian Arab Republic proposed to keep the word "intentionally", noting, however, that "organized" crime implied an intentional offence. At the fifth session of the Ad Hoc Committee, a number of delegations supported the deletion of these words on the grounds that the mental element of crime was generally a matter for domestic law and that requiring intentional commission in an international instrument was unnecessarily restrictive.

[86] This addition was proposed by the delegation of France (A/AC.254/L.21). At the fifth session of the Ad Hoc Committee, a number of delegations supported the deletion of this text on the grounds that it was unnecessarily restrictive. The delegation of the Islamic Republic of Iran proposed that the requirement be strengthened by requiring connection to a "transnational" criminal organization. The delegation of the Syrian Arab Republic proposed that the requirement be expanded to include both connection with a criminal organization and the commission of some element of a transnational criminal offence in one of the States involved.

(a) Illicit trafficking in firearms,[87] ammunition [and other related materials]; [and][88]

(b) Illicit manufacturing of firearms,[89] ammunition [and other related materials];[90]

[(c) [Illicit] detention[91] and use of [illicitly trafficked or manufactured] firearms,[92] ammunition and other related materials;][93]

[(d) Importing, exporting and manufacturing of any explosive bomb, incendiary bomb, gas bomb, grenade, rocket, rocket launcher, missile system or mine without a licence or authorization from a competent authority of the State Party;][94] [and

[87] The words "parts and components", which had been added to a previous draft in error, have been deleted at this point. The same change has been made in article 3, option 2, paragraph (b), and article 5, paragraphs 1 (b) and (c).

[88] After some discussion of a proposal to combine paragraphs 1 (a) and (b), it was decided at the fifth session of the Ad Hoc Committee that separate provisions were needed to clarify that compliance would require the enactment of two distinct offences, rather than a single combined offence. The insertion of the word "and" would depend on whether subparagraph (c), (d) or (e) (or any combination of those subparagraphs) remains in this paragraph.

[89] The words "parts and components", which had been added to a previous draft in error, have been deleted at this point. The same change has been made in article 3, option 2, paragraph (b), and article 5, paragraphs 1 (a) and (c).

[90] The delegation of the United Kingdom suggested giving consideration to establishing a new offence to cover the "brokering" of illicit firearm deals abroad by citizens operating from within their own countries (A/AC.254/5/Add.1 and Corr.1). The delegation of Japan suggested the criminalization of offences involving the offering of funds and transportation for illicit manufacturing and trafficking, in the absence of a conspiracy provision (A/AC.254/5/Add.1 and Corr.1). The delegation of Japan proposed that there should be a provision in this article that would encourage States Parties to reduce or exempt from penalty in the case of voluntary surrender to the authorities for the collection of illicit firearms (A/AC.254/5/Add.1 and Corr.1) (see also footnote 5).

[91] A number of delegations expressed concern or uncertainty about the meaning of the word "detention" in the English text. The delegation of Botswana proposed that it be replaced with the word "possession". Other delegations expressed concern that dealing with possession was beyond the mandate of the Ad Hoc Committee or that simple possession offences might not be treated as criminal offences (as opposed to administrative or regulatory offences) in domestic law. Others argued that the inclusion of a provision on possession offences was needed to control illicit trafficking and was therefore not beyond the mandate of the Ad Hoc Committee and that such a provision would be an important tool in combating transnational organized crime. Some delegations voiced support for including the word "possession" but wanted the word "use" deleted. Several delegations voiced concern that domestic legislation implementing this requirement, if not properly worded, might include innocent possession of illicitly trafficked or manufactured firearms. The delegation of Switzerland pointed out that that possibility would be eliminated by the reference to "illicit" possession or detention, as long as that word was retained.

[92] The words "parts and components", which had been added to a previous draft in error, have been deleted at this point. The same change has been made in article 3, option 2, paragraph (b), and article 5, paragraphs 1 (a) and (b).

[93] Addition proposed by the delegation of France, with reservations on the language in the inner brackets (see also footnote 5).

[94] This addition was proposed by the delegation of Norway at the fifth session of the Ad Hoc Committee as a consequence of its proposal that subparagraph (c) (ii) of article 2 (which included these devices in the definition of "firearm") be deleted. A number of delegations expressed support for this proposal as a compromise solution. Others maintained that the text should be deleted entirely as it went beyond the mandate of the Ad Hoc Committee. Several delegations continued to support its retention in article 2 (for details, see footnotes 37 and 38). A number of delegations reserved their positions pending translation of the proposed texts.

(e) Obliterating, removing or altering the serial number on a firearm.][95, 96]

[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties,[97] the criminal offences established pursuant to paragraph 1 of this article shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating [and counselling][98] the commission of said offences.][99]

[3. States Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council.][100]

Article 6
Jurisdiction[101]

Option 1

Each State Party shall adopt such measures as may be necessary [within its own national legislation][102] to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol.

[95] The delegation of the Republic of Korea proposed that this text, presently in subparagraph (e) (iii) of article 2, be inserted in article 5. The proposal was supported by Botswana and France.

[96] At the fifth session of the Ad Hoc Committee, the delegation of the United States proposed that a provision criminalizing activities relating to the "brokering" of transactions designated as illicit in article 5 be inserted here.

[97] The delegation of Croatia proposed that the wording "subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties" could be replaced with wording similar to that of article 1 (option 1) of the draft Convention (A/AC.254/4).

[98] Deletion proposed by the delegation of Pakistan.

[99] The delegation of Croatia proposed the deletion of this paragraph since the contents of the paragraph were already included in the draft Convention. This proposal was supported by Paraguay. The delegation of the Netherlands suggested that the same wording as that of article 3 of the draft Convention would be preferable.

[100] This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of the Netherlands and South Africa (A/AC.254/5/Add.5). At the fifth session of the Ad Hoc Committee, a majority of delegations argued that this provision was an arms control measure and not a crime control measure and, being beyond the mandate of the Ad Hoc Committee, should be deleted. Several delegations argued that, on the contrary, the breaking of United Nations arms embargoes in conflict situations was an activity likely to be engaged in by transnational organized criminal groups and should therefore be dealt with in the draft Protocol.

[101] Depending on the final draft of the Convention, this provision may not be necessary or may require modification.

[102] Addition proposed by the delegation of Ecuador.

Option 2[103]

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol when the offence in question is committed in its territory.

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol when the offence is committed by one of its nationals or by a person who habitually resides in its territory.

3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol when the alleged criminal is present in its territory and it does not extradite such person to another country on the basis of the nationality of the alleged offender.

4. This Protocol does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article 7
Confiscation or forfeiture[104]

1. States Parties shall undertake to confiscate or [forfeit][105] firearms, ammunition and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

Option 1

[2. States Parties shall adopt the necessary measures to ensure that no firearms, ammunition and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking fall into the hands of private individuals or businesses through auction [, sale][106] or other disposal.[107]][108]

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[103] This alternative was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). The delegation of the United Kingdom also suggested that this provision could be extended to include a provision allowing States Parties to maintain jurisdiction over their nationals who commit no offence in their home country but engage in illicit arms trafficking abroad (A/AC.254/5/Add.1 and Corr.1).

[104] The final form of this article will be influenced by the general provision on confiscation and forfeiture in the Convention. If that provision proves inapplicable or insufficient in respect of the particular needs of the subject matter of the Protocol, the article will require further drafting.

[105] Replacement of the word "forfeit" with the words "require forfeit of" was suggested by the delegation of the United Kingdom.

[106] It was noted by the delegation of the Syrian Arab Republic that domestic legislation should determine how the sales of confiscated firearms were regulated.

[107] It was suggested by the delegation of South Africa that the destruction of unauthorized weapons should also be included in this provision (A/AC.254/5/Add.1 and Corr.1). The delegations of the Russian Federation and Senegal suggested that those confiscated firearms disposed of in a controlled fashion should not necessarily be destroyed.

[108] The Chairman suggested placing this paragraph in brackets because of conflicts with the domestic laws of some States.

Option 2[109]

2. States Parties shall prevent illicitly manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal [that includes destroying them or rendering them unusable][110] has been officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded.

Article 8
Record-keeping[111]

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms [, their parts and components and [, as appropriate,][112] ammunition][113] that is necessary to trace and identify those firearms which are illicitly manufactured or trafficked and to prevent and detect such activities [within its jurisdiction].[114] The information shall [may][115] include:

(a) The appropriate markings applied at the time of manufacture;

(b) In cases involving international transactions [in firearms, their parts and components and ammunition],[116] the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries where appropriate and the final recipient and the description and quantity of the articles.

[109] Alternative proposed by the delegations of Germany and the Republic of Korea, taken from the action plan recommended by the Senior Experts Group on Transnational Organized Crime.

[110] Proposal made by the delegation of South Africa (A/AC.254/5/Add.5).

[111] The text of this article was proposed at the seventh session of the Ad Hoc Committee by the delegation of Canada (A/AC.254/L.129) and was adopted with several amendments for purposes of further discussion.

[112] Proposed by the delegation of Italy at the seventh session of the Ad Hoc Committee to accommodate the concerns of some delegations who had expressed difficulty with the inclusion of ammunition. Some delegations argued that keeping records of ammunition transfers was an important element of the draft Protocol. Other delegations expressed concern about the implications, notably the marking of ammunition, which was seen as impracticable.

[113] Proposed by the delegation of the United States at the seventh session of the Ad Hoc Committee.

[114] Proposed by the delegation of China at the seventh session of the Ad Hoc Committee. Some delegations supported the proposal because it added flexibility, while others opposed it as weakening the record-keeping requirement.

[115] At the seventh session of the Ad Hoc Committee, the delegation of China proposed replacing the word "shall" with the word "may".

[116] Proposed by the delegation of the United States at the seventh session of the Ad Hoc Committee.

Article 9
Marking of firearms[117, 118]

1. For the purposes of identifying and tracing firearms, [referred to in article 2, subparagraph (c) (i), of this Protocol,][119] States Parties shall:[120]

(a) Require,[121] at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];[122]

[(b) Require[123] appropriate markings on each imported firearm[124] [following its importation for the purpose of commercial sale within the importing country, or permanent private importation],[125] permitting the identification of the importer's name and address

[117] The delegation of Germany entered a reservation on this article pending further study to allow for more specific comments to be made as negotiations proceed. However, the importance of the article was stressed by many other delegations and there was general agreement on both the need for marking and the inclusion of the article in the draft Protocol.

[118] The delegation of the United States suggested that inputs should be sought from experts on the technical issues, including those on marking—a suggestion that was supported by the delegations of Australia, Ecuador, Norway, the Philippines, Saudi Arabia, Switzerland, Tunisia and Turkey. The delegation of the United States stressed that discussion by experts would not be a drafting exercise. The delegation of Cuba suggested that the expertise developed in the Panel of Governmental Experts on Small Arms established in pursuance of General Assembly resolution 50/70 B of 12 December 1995 and in the Department for Disarmament Affairs of the Secretariat might also be utilized. The delegation of the United States suggested that inputs should also be sought from relevant non-governmental organizations and the firearm manufacturing industry.

[119] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of the Holy See.

[120] At the seventh session of the Ad Hoc Committee, the delegation of the United States proposed replacing the opening words with the words "States Parties shall adopt the following measures to mark commercially manufactured firearms". That proposal was opposed by most delegations as a weakening of the marking requirement.

[121] The requirement for marking at the time of manufacture was generally agreed upon.

[122] On the type of information to be contained in the marking at the time of manufacture, the delegation of the United Kingdom proposed to include the year of manufacture and suggested that the meaning of the words "place of manufacture" should be clarified (A/AC.254/5/Add.1 and Corr.1). The delegation of Argentina proposed to include model number, in addition to serial number. The delegation of New Zealand proposed to replace the words "serial number" with the words "unique identifier". The delegation of China proposed to delete the words "name of manufacturers". The delegation of Switzerland suggested that the marking requirement should not be overloaded.

[123] Many delegations, including those of Kuwait, the Libyan Arab Jamahiriya, New Zealand, Portugal, the Republic of Korea, Saudi Arabia, the United Kingdom and the United States, as well as the representatives of the World Customs Organization and the International Criminal Police Organization (Interpol), supported the requirement of marking at the time of import. The delegations of China and France were of the opinion that further consideration of the matter was needed. At the seventh session of the Ad Hoc Committee, the delegation of the United Arab Emirates proposed that firearms transferred across borders be marked by exporters instead of importers.

[124] The delegation of Japan suggested that the period for marking imported firearms should be defined (i.e. the period during which they passed through customs or during which they were legally obtained by the final recipient) (A/AC.254/5/Add.1 and Corr.1).

[125] This addition was proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia, the Philippines, Portugal, Saudi Arabia and Tunisia. The delegations of the Holy See, New Zealand, Nigeria, Qatar and the Republic of Korea stated their preference for not including this phrase so that marking would be required regardless of the purpose of import.

[and an individual serial number if the firearm does not bear one at the time of import][126] [so that the source of the firearm can be traced];[127] and

(c) [[Require][128] the appropriate marking of any firearm confiscated or forfeited pursuant to article 7 of this Protocol that is retained for official use.[129]][130]

[(d) Require, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate marking of the place of transfer and serial number.][131]

[1 *bis*. The firearms referred to in article 2, subparagraph (c) (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.][132]

2. States Parties shall encourage the firearm manufacturing industry to develop measures to guard against the removal[133] of markings.[134, 135]

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[126] This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1). The Holy See proposed the deletion of this phrase.

[127] This addition was proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1). The delegation of New Zealand requested clarification of the word "source".

[128] The delegations of the Libyan Arab Jamahiriya, the Netherlands and Saudi Arabia supported the requirement for marking confiscated firearms. The delegation of France was of the opinion that further consideration was needed. The delegation of the Netherlands proposed changing the word "require" to the word "ensure".

[129] At the seventh session of the Ad Hoc Committee, the delegation of Japan proposed adding at the end of this subparagraph the words "except authorized samples".

[130] At the seventh session of the Ad Hoc Committee, there were further discussions about whether to mark firearms only at the time of manufacture or again as set out in subparagraphs (b) and (c). Many delegations expressed concern about the costs and technical feasibility of the additional marking requirement, but further discussions will be needed to resolve the issue.

[131] This text was proposed by the delegation of Norway at the seventh session of the Ad Hoc Committee. Many delegations reserved their positions pending further review. Some delegations argued that if government firearms were marked at manufacture, it would not be necessary to re-mark them at the time of their transfer to civilian hands.

[132] This additional paragraph was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[133] At the seventh session of the Ad Hoc Committee, the delegation of France suggested that the word "complete" be added before the word "removal". It noted that criminals would adopt technical developments of their own to remove markings and elude tracing.

[134] The delegation of South Africa suggested including the words "developing effective and inexpensive measures to mark firearms" in this paragraph (A/AC.254/5/Add.5). The importance of there being an inexpensive way of marking was mentioned by the delegation of Pakistan. The delegation of Saudi Arabia suggested including a reference to "forged or counterfeited marking", which was supported by the delegation of Colombia.

[135] Other issues discussed in relation to this article included: (a) the need for an international database on firearm manufacturers (suggested by the delegation of Argentina and supported by the delegations of Colombia, Ecuador, Nigeria, Portugal and Ukraine); (b) the need for a universally compatible marking system (suggested by the delegation of the Netherlands and supported by the delegations of Portugal, Switzerland and Ukraine); and (c) the need for marking ammunition (suggested by the delegations of Turkey and Ukraine). While expressing its support for marking, the delegation of China expressed the view that differences in marking methods in each region needed to be taken into account in developing this article.

[*Article 10*

Preventing the reactivating of deactivated firearms[136, 137]

States Parties that do not recognize a deactivated weapon as a firearm in accordance with domestic law shall take the necessary measures, including the creation of specific criminal offences, if appropriate, to prevent the reactivation of deactivated firearms, consistent with the general principles of deactivation set out below:

(a) While retaining, as far as is practicable, the aesthetic outer appearance of the firearm, all essential parts of the firearm are to be rendered permanently inoperable and incapable of being removed for replacement parts or other modifications that might permit the firearm to be reactivated in any way;

(b) Arrangements are to be made for deactivation measures to be certified by a designated proof house (or other appropriate authority) to verify that the modifications made to a firearm meet the relevant standard for that type of firearm;

(c) Certification by the proof house (or other appropriate authority) must include a clearly visible and identifying mark on the firearm and issuance of a certificate recording the deactivation that includes the make, model and serial number of the firearm.]

Article 11

General requirements for export, import and transit licensing or authorization systems[138]

1. States Parties shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit,[139] for the transfer of firearms, their parts and components and ammunition.

Option 1

2. States Parties, before issuing export licences or authorizations for [commercial][140] shipments of firearms, their parts and components and ammunition, shall verify that:

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[136] This new text was proposed by the delegation of the United Kingdom at the seventh session of the Ad Hoc Committee (A/AC.254/L.143) and was adopted, pending in-depth consultation, as the basis for future discussion. A number of delegations sought clarification of the term "deactivated firearms". The delegation of the United Kingdom indicated that the term referred to firearms that had been intentionally rendered inoperable to a high degree of permanence and did not include firearms that had been decommissioned for storage or similar purposes or firearms in need of repair.

[137] The delegation of Mexico proposed the deletion of this article (A/AC.254/5/Add.1 and Corr.1).

[138] The text of this article was approved for the purposes of further discussion, based on the recommendation of a working group at the seventh session of the Ad Hoc Committee. The delegation of Colombia proposed additional text (A/AC.254/5/Add.18) for this article. The delegation of Mexico asked that this proposal be considered as a possible annex.

[139] The working group at the seventh session of the Ad Hoc Committee was of the view that there was a need for a definition of the term "transit" to be inserted in article 2. It might be possible to adapt a definition from the rules of the World Customs Organization.

[140] The working group noted that the word "commercial" was a term of art among customs agencies in various countries, where it was used to refer to transactions that were not bona fide non-commercial transactions. A number of delegations favoured the deletion of the word. The working group noted that the Protocol would not preclude States Parties from developing more stringent domestic rules.

Option 2

2. [States Parties issuing export licences or authorizations for commercial shipments of firearms, their parts and components and ammunition shall not permit exports until:]

(a) The importing States have issued import licences or authorizations; and

(b) [Whenever there is transit] [Where applicable], the transit States have at least given notice in writing that they have no objection to the transit.

3. The export and import licence or authorization [and accompanying documentation together] shall contain information that, at a minimum, shall identify the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, the description and quantity of the firearms, their parts and components and ammunition and [, whenever there is transit,] [, where applicable,] the transit States, [[whenever there is the involvement of any person described in article 18 *bis* of this Protocol] the involvement of any person described in article 18 *bis*, of this Protocol.] The information contained in the import licence must be provided in advance to the transit States.[141]

4. The shipment shall, at all times, be accompanied by an official routing document provided by the exporter or his or her agent that, at a minimum, shall contain the above-mentioned information. This document shall be made available whenever the transit States Parties so require and, wherever applicable, shall be marked by the transit States Parties before the shipment leaves their respective territories.

5. The importing State Party shall inform the exporting State Party, upon request, of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

[[6. Written approval from the exporting State must [may][142] be obtained before a State Party may authorize the re-export [, retransfer, trans-shipment or other disposition][143]

[141] During the discussion in the working group, one delegation expressed the view that the export State should provide the transit States with the information contained in the import licence. Another suggested that that should be done by the exporter.

[142] At the seventh session of the Ad Hoc Committee, the delegation of Turkey proposed replacing the word "must" with the word "may".

[143] Deletion proposed by the delegation of the United States at the seventh session of the Ad Hoc Committee.

of firearms to any end-user,[144] end use or destination other than that stated on the export licence or authorization.][145, 146]

7. States Parties shall, within available means, adopt such measures as may be necessary to ensure that licensing or authorization documents are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.

8. [States Parties may adopt simplified [export, import] licensing or authorization procedures in cases involving the temporary transfer of firearms, their parts and components and ammunition, for the verifiable purpose of hunting, sport shooting, exhibitions or repairs.][147, 148]

[144] At the seventh session of the Ad Hoc Committee, many delegations expressed concern about the viability of this proposal and its implications for the sovereignty of States Parties. Other delegations pointed out that the value of "end-user" controls was that, as a further control on trafficking, States Parties would be able to apply such controls to prevent weapons exported by them from eventually falling into the hands of potential enemies.

[145] This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of the Holy See, Italy, the Philippines and Turkey. The delegations of China, Pakistan and the Republic of Korea proposed the deletion of this paragraph. The delegation of the Netherlands suggested that such approval on re-export should not be obligatory unless the exporting country requested it. The delegation of Nigeria proposed that re-exporting countries submit a written explanation indicating why and to whom the firearms would be re-exported.

[146] The delegation of Japan suggested that recognition should also be imposed in the case of import from, export to and transit through non-States Parties, with a view to reducing detour exports (A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the delegation of the Republic of Korea.

[147] The working group noted that, if the word "commercial" were to be deleted from the first line of paragraph 2 of this article, the text of this provision would have to be inserted to take into account subparagraph (h) of the preamble, which refers to the interests of hunters, sport shooters and other recreational activities involving firearms.

[148] During the discussion in the working group, one delegation expressed the view that this paragraph related to the scope of the draft Protocol and should therefore be dealt with in article 4.

Article 12

Security and preventive measures[149]

States Parties, in an effort to [detect,][150] prevent and eliminate the theft, loss or diversion[151] of [, as well as the illicit manufacturing of and trafficking in,][152] firearms, their parts and components and ammunition, shall adopt the necessary [appropriate][153] measures:

(a) To ensure the security of firearms, their parts and components and ammunition at the time of manufacture,[154] import, export and transit through their respective territories; and

Option 1

(b) To strengthen controls of their borders, especially at export points.

Option 2

(b) To increase the effectiveness of [import and][155] export controls, including, where appropriate, border controls.[156]

Option 3

(b) To strengthen police [law enforcement][157] and customs transborder cooperation.[158]

[*Article 13 has been merged with article 12 (see footnote 149).*]

[149] This title was adopted for the purpose of further discussion at the seventh session of the Ad Hoc Committee. Other proposed titles were "Security and prevention" (delegation of Colombia), "Prevention and control" (delegation of Cameroon) and "Security measures" (delegation of the United Arab Emirates). The Ad Hoc Committee also approved the following text, which merges the content of former articles 12 and 13 into a new article 12.

[150] Proposal of the delegation of Australia at the seventh session of the Ad Hoc Committee.

[151] At the seventh session of the Ad Hoc Committee, some delegations asked for clarification of the term "diversion". Other delegations pointed out that the term was used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, in connection with the diversion of goods (in that case, substances, materials and equipment used in the illicit manufacture or production of narcotic drugs or psychotropic substances) from licit to illicit channels.

[152] Proposal of the delegation of Brazil at the seventh session of the Ad Hoc Committee.

[153] Proposal of the delegation of Brazil at the seventh session of the Ad Hoc Committee. The delegation of Japan suggested that such measures should be clarified (A/AC.254/5/Add.1 and Corr.1).

[154] At the seventh session of the Ad Hoc Committee, the delegation of Australia expressed some concern about the inclusion of the word "manufacture" in this provision.

[155] Proposal of the delegation of Italy at the seventh session of the Ad Hoc Committee.

[156] Proposal of the delegation of Brazil at the seventh session of the Ad Hoc Committee.

[157] Proposal of the delegation of Turkey at the seventh session of the Ad Hoc Committee.

[158] Proposal of the delegation of France at the seventh session of the Ad Hoc Committee.

Article 14
Exchange of information[159]

1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves [and with the relevant intergovernmental organizations],[160] in conformity with their respective domestic laws and treaties applicable to them,[161] relevant information on matters such as:

(a) Authorized producers, dealers,[162] importers, exporters and, whenever possible, carriers of firearms, ammunition and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition and other related materials and ways of detecting them;

(c) Routes customarily used by criminal organizations[163] engaged in illicit trafficking in firearms, ammunition and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.[164, 165]

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[159] Although the Convention is likely to include a general provision on the exchange of information, a provision dealing with that issue in this Protocol is recommended. The final form of the provision will need to take into account the corresponding article(s) in the Convention. At the seventh session of the Ad Hoc Committee, it was agreed that it was necessary for the Protocol to deal with the exchange of information in the context of illicit firearm trafficking more specifically than in the corresponding articles of the Convention. Many delegations also expressed the view that the text could not be finalized until the text of the Convention had been negotiated.

[160] Addition proposed by the delegation of Colombia. The delegation of the United States was of the opinion that there was no need to name all relevant intergovernmental organizations in this article. The delegation of the Republic of Korea noted that the exchange of information with a certain intergovernmental organization should be based on the agreements between each State and the intergovernmental organization concerned and that such an issue should not be dealt with in the Protocol.

[161] At the seventh session of the Ad Hoc Committee, the delegation of China proposed adding the words "and taking into account their legitimate security or commercial concerns" at this point.

[162] At the seventh session of the Ad Hoc Committee, the delegation of the United States proposed adding the word "brokers" at this point, as a consequence of amendments that it had proposed to articles 5 and 18 *bis*.

[163] At the seventh session of the Ad Hoc Committee, the delegation of Pakistan proposed replacing the words "criminal organization" with the words "organized criminal group" for consistency with the language of the Convention. Several delegations expressed the view that the wording should not limit the application of this provision to criminal groups.

[164] At the seventh session of the Ad Hoc Committee, some delegations proposed deleting this subparagraph as it duplicated the corresponding provision of the Convention.

[165] At the seventh session of the Ad Hoc Committee, the delegation of Switzerland proposed adding the following subparagraph: "In cases of mutual legal assistance, records kept pursuant to article 8 of this Protocol shall be open for confidential access by the State Party concerned."

The delegation of Japan proposed that, should the Swiss proposal be adopted, it should extend to cases other than legal assistance cases. It therefore proposed to replace the words "In cases of mutual legal assistance" with the words "Where necessary for investigations relating to firearms, their parts and components or ammunition".

2. States Parties shall provide to or share with each other, [and with the relevant intergovernmental organizations,][166] as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and to prosecute the persons involved in those illicit activities.

3. States Parties shall cooperate [among themselves and with the relevant intergovernmental organizations][167] in the tracing of firearms, ammunition and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition and other related materials.[168]

Article 15
Cooperation[169]

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

2. Each State Party shall identify a national body or a single point of contact[170] to act as liaison between it and other States Parties [and between it and the relevant intergovernmental organizations][171] [on matters relating to this Protocol].[172]

[3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, ammunition and other related materials to prevent and detect the illicit activities referred to in paragraph 1 of this article.][173]

[166] Addition proposed by the delegation of Colombia.

[167] Addition proposed by the delegation of Colombia.

[168] The delegation of South Africa suggested including in this paragraph a reference to the Interpol Weapons and Explosives Tracking System as one means of cooperating in tracing (A/AC.254/5/Add.5).

[169] At the seventh session of the Ad Hoc Committee, the importance of this article was stressed by some delegations. Despite there being an identical provision in the draft Convention, it was decided to retain the article for the time being.

[170] The delegation of Japan noted that designation of "a single point of contact" should allow the exchange of information already established among the existing authorities (A/AC.254/5/Add.1 and Corr.1).

[171] Addition proposed by the delegation of Colombia.

[172] The delegation of Mexico proposed to replace this language with the words "for the purposes of cooperation and information exchange" (A/AC.254/5/Add.1 and Corr.1).

[173] Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

[*Article 15 bis*
Establishment of a focal point[174]

1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [the Secretariat of the United Nations][175] responsible for:

(a) Promoting the exchange of information provided for under this Protocol;

(b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

(c) Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition and other related materials;

(d) Promoting training and the exchange of knowledge and experiences among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

(e) Requesting from States not Parties to this Protocol, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;[176]

(f) Promoting measures to facilitate the application of this Protocol;

(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;[177]

(h) Establishing a database for consultation among States Parties on the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, including those seized, confiscated or forfeited;

(i) Disseminating information to the general public on matters related to this Protocol;

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[174] This new article was proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of South Africa (A/AC.254/5/Add.5). The delegations of Japan and the Netherlands noted the need to clarify the role and responsibility of the proposed focal point in order to avoid duplication. The delegation of France supported this article and proposed to consider utilizing, in order to avoid duplication of work, existing relevant United Nations mechanisms, such as the coordinating action of the Secretariat on small arms, or relevant intergovernmental organizations. The delegations of Pakistan, the Republic of Korea and Saudi Arabia were of the opinion that this article was superfluous, the delegation of Pakistan noting that it overlapped with article 15, paragraph 2. The delegation of the United Arab Emirates was of the opinion that further consideration was needed of the necessity of such a focal point. At the seventh session of the Ad Hoc Committee, it was decided that at least some of the provisions were not redundant in spite of there being identical provisions in the draft Convention and that they should be retained until the corresponding articles of the Convention had been negotiated.

[175] This addition was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). The delegations of France, Saudi Arabia and the United States noted that budgetary implications should be kept in mind in designating this focal point in the Secretariat.

[176] The delegations of Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to extend the role of such a focal point to include cooperation with States that were not Parties to the Protocol.

[177] The delegations of Pakistan, the Republic of Korea, Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to address in the Protocol the issue of Security Council embargoes on arms transfers.

(j) Coordinating international efforts, in particular among relevant international organizations, to combat the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.]

Article 16
Exchange of experience and training[178]

1. States Parties shall cooperate in formulating programmes for the exchange of experience and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proved to be effective in efforts to implement this Protocol.

2. States Parties shall cooperate with each other and with [the International Criminal Police Organization, as well as other][179] competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials. The subjects covered in such training shall include, *inter alia*:

(a) Identification and tracing of firearms, ammunition and other related materials;

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, the methods of shipment used and the means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition and other related materials.

[178] Although the Convention is likely to include a general provision on exchanges of experience and training, it would be useful to include a provision dealing with those issues in this Protocol. The final form of this provision will need to take into account the corresponding article(s) in the Convention. At the seventh session of the Ad Hoc Committee, some delegations expressed the view that this article should be kept in the draft Protocol despite there being an identical provision in the draft Convention.

[179] Addition proposed by the delegation of Colombia.

Article 17
Confidentiality[180, 181]

Subject to the obligations imposed by its constitution [, other law][182] or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If for legal reasons[183] such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.[184]

Article 18
Technical assistance[185]

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit

[180] At the seventh session of the Ad Hoc Committee, it was decided to retain only the former option 1 for the purposes of further discussion and to remove the brackets from the words "including proprietary information pertaining to commercial transactions". Several delegations noted that the confidentiality and notification requirements of this article had implications for article 14 of the draft Convention, which dealt with mutual legal assistance in criminal matters. They expressed the view that those requirements should not reduce the effectiveness of article 14.

[181] At the seventh session the delegation of Mexico proposed a reorganization of this article so that the text would read:

"States Parties shall guarantee the confidentiality of any information that they receive from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information, unless the State Party concerned has previously informed the State Party providing the information about the possibility that it may be unable to fulfil this obligation pursuant to its domestic legislation. In cases where the confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure."

[182] Several delegations proposed alternative wording for this provision at the seventh session of the Ad Hoc Committee. Proposals were "domestic law" (delegation of Australia), "domestic legislation" (delegation of Italy) and "constitution or law" (delegation of Pakistan).

[183] At the seventh session of the Ad Hoc Committee, the delegation of Cameroon suggested that the word "legal" be replaced with the word "judicial". Other delegations expressed concern that the term "judicial" was too narrow in scope. The delegation of Australia proposed that the words "for legal reasons" be replaced with the words "as a result of obligations imposed by its constitution [, domestic] law or any international agreements".

[184] At the seventh session of the Ad Hoc Committee, the delegation of China proposed that the text require that the State Party of whom the information was requested be informed about whether confidentiality could be maintained before the information was provided. It proposed to replace the words "that provided the information be notified prior to its disclosure" with the words "is to provide the information shall be notified prior to its provision of the information". In discussing this proposal, some delegations favoured requiring notification prior to providing the information, while others favoured notification after release but before disclosure of the information for legal reasons. Delegations were urged to consider this issue carefully so that a compromise could be reached at the next session. At an earlier session, the delegation of Japan had suggested that full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law (A/AC.254/5/Add.1 and Corr.1).

[185] The final form of this provision will need to take into account the corresponding article(s) in the Convention. The delegation of Japan suggested that this article should appear as article 16, paragraph 3, of the draft Protocol (A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the delegation of the Netherlands. At the seventh session of the Ad Hoc Committee, some delegations suggested that this provision could be deleted eventually, but there was agreement that it should be retained pending the finalization of the corresponding provision of the draft Convention.

manufacturing of and trafficking in firearms, ammunition and other related materials, including technical assistance in those matters identified in article 19 of the Convention.

[*Article 18 bis*
Registration and licensing of brokers,[186] [*traders and forwarders*][187]

[With a view to preventing and combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,][188] States Parties that have not done so shall take steps to require persons[189] who act on behalf of others, in return for a fee or other consideration, [for traders, forwarders][190] in negotiating or arranging transactions involving the international export or import of firearms, their parts and components or ammunition:

(a) To register with the country [of nationality and with the country where the negotiations or arrangements referred to above take place;][191] [where they are resident or established;][192] and

(b) To obtain for [their transactions][193] [each transaction][194] a licence or authorization from the country [where the negotiations or arrangements referred to above take place][195] [where they are resident or established.][196]]

[186] At the seventh session of the Ad Hoc Committee, it was decided to replace the originally proposed text of article 18 *bis* with a new text proposed by the delegation of the United States (A/AC.254/Add.18), as amended by Colombia. A second option for some of the text proposed by the delegation of Switzerland was also incorporated for the purpose of further discussion. Several delegations reserved their positions on the proposal pending further consultations and it was noted that, as the previous text of this article had not been approved, the text should also remain in square brackets. Several delegations also requested clarification of the meaning of the word "broker". Generally, the Swiss proposals would base licensing requirements on the laws of the broker's place of residence or business and allow the conducting of regular business or multiple transactions on a single licence. The proposals of the United States would require a separate licence for each transaction and would require licensing by several jurisdictions: the broker's residence, the country of nationality and the country where the transaction took place. Delegations were asked to consult on these major issues to permit closure of the text at the next session.

[187] Proposed by the delegation of Colombia at the seventh session of the Ad Hoc Committee.

[188] Proposed by the delegation of Colombia at the seventh session of the Ad Hoc Committee.

[189] At the seventh session of the Ad Hoc Committee, the delegation of Malawi proposed that the word "person" be replaced with the word "broker" and that the words "who act on behalf of others, in return for a fee or other consideration in negotiating or arranging transactions involving the international export or import of firearms, their parts and components or ammunition" be used to construct a definition of the term "broker" in article 2.

[190] Proposed by the delegation of Colombia at the seventh session of the Ad Hoc Committee.

[191] Proposed by the delegation of the United States at the seventh session of the Ad Hoc Committee.

[192] Proposed by the delegation of Switzerland at the seventh session of the Ad Hoc Committee.

[193] Proposed by the delegation of Switzerland at the seventh session of the Ad Hoc Committee.

[194] Proposed by the delegation of the United States at the seventh session of the Ad Hoc Committee.

[195] Proposed by the delegation of the United States at the seventh session of the Ad Hoc Committee.

[196] Proposed by the delegation of Switzerland at the seventh session of the Ad Hoc Committee.

Article 19
Settlement of disputes[197]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [90 days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 20
Signature, ratification, acceptance, approval, accession and reservations

1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. The present Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Option 1

[3. No reservations may be made in respect of any provision of this Protocol.]

Option 2

[3. Reservations shall be subject to the provisions of the Vienna Convention on the Law of Treaties of 1969.[198]]

[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

[197] The text of these final provisions is identical to the text of the corresponding provisions of the draft Convention and is reproduced here in accordance with a decision made by the Ad Hoc Committee at its sixth session (A/AC.254/23) and without prejudice to its content, which is still under negotiation. Only necessary editorial changes have been made to the text. For issues related to these provisions, see the footnotes to articles 25, 26 and 27-30 of the draft Convention.

[198] United Nations, *Treaty Series*, vol. 1155, No. 18232.

6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 21
Entry into force

1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 22
Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 23
Denunciation

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 24
Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.